S.B. CIVIL MISC. APPEAL NO. 245/1996

Date : 10.05.2006

HON'BLE MR. BHAGWATI PRASAD, J.

Mr. K.K. Shah for the appellant.
Mr. Anil Bachhawat for the respondent.

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Heard.

Learned counsel for the appellant has placed reliance on a decision of this Court in the matter of National Insurance Company Limited Vs. Smt. Rukmani Devi & Ors reported in 1999 WLC (Raj.) UC 462 wherein, this Court has held as under :-

> "2. It is submitted by the counsel for the appellant that the liability of the Insurance Company will have to be determined in accordance with Section 95 of the Motor Vehicles Act which is a fit statotory liability under the Act. It was found by the Court that the premium paid to the Insurance Company for liability to the public risk was Rs.240/-. The ordinary payment for "Act only" liability is Rs. 200/- for covering the risk. Thus, the Insurance company was paid extra premium for the liability to the public risk and the only inference which can be drawn that Rs. 40/- were charged extra for covering the liability of death and bodily injury of the third party. The premium which would be required to pay for "Act only" policy would have been Rs.200/- only and when extra premium was charged, the Insurance company has taken the responsibility to indemnify owner of the vehicle insured to unlimited liability. The learned Single Judge has rightly passed on the liability jointly and severally on the Insurance company alongwith the owner insured and the driver of the vehicle."

Learned counsel for the respondent per contra urged that the Division Bench has no correctly appreciated the charging of premium of Rs. 240/-. This is for its own damages and does not cover the passengers. That being the position, the Division Bench has not taken the correct perspective of law. He places reliance on a Supreme Court decision in the matter of National Insurance Co. Ltd. Vs. Jugal Kishore and others reported in 1998 ACJ 270. Learned counsel for the respondent has further relied on India Motor Tariffs, Schedule of Premiums and places reliance on the chart showing legal liability for accident to the passengers.

Be that as it may, as far as this Court is concerned, this Court is bound by the Division Bench decision which says that Rs.240/- premium as charged would be un-limited liability premium. That being the position, the judgment passed by the tribunal is not liable to be sustained and the Insurance company will have to make good the claim of the claimants and it cannot be charged from the appellants who are owners of the bus. Whatever has been deposited by owner will be paid to the owner.

The appeal is disposed of.

(BHAGWATI PRASAD), J.